

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 618 of 1999

in

SPECIAL CIVIL APPLICATION No 10633 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VIRENDRASINH SANKARSINH RATHOD

Versus

STATE OF GUJARAT

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Appearance:

MR SR BRAHMBHATT for Appellant

MR JOSHI ,ASSTT.GOV.T.PLEADER for Respondent No. 1, 2, 3

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

Date of decision: /11/1999

CAV JUDGEMENT

Per Thakker, Actg.C.J:

Admitted. Mr. Joshi, learned AGP appears and waives service of notice of admission on behalf of the respondents. In the facts and circumstances of the case, the matter was taken up for final hearing.

This appeal is filed against summary dismissal of SCA No.10633 of 1998 by the learned Single Judge on April 1, 1999. The appellant was the original petitioner. He approached this court by filing the above petition for an appropriate writ, order or direction that he was eligible and was, therefore, entitled to be admitted in the course of Diploma in Electronics and Telecommunication Engineering and by directing the authorities to admit the petitioner in the said course in the Academic Year 1998-99.

The case of the petitioner was that after passing SSC and HSC examination, he became eligible to be admitted to the course in Diploma in Electronic and Tele-communication Engineering. He had also successfully completed Certificate Course in Electronic Fabrication and Assembly Mechanic conducted by Technical Examination Board of the State of Gujarat. In 1998, he applied for admission in Diploma in Electronics and Communication Engineering. As he was eligible, he received interview call. The booklet issued by the respondent authorities specifically mentioned in clause 7.6 that he will be reserved seats for students having certificate in the courses mentioned thereunder. The course completed by the petitioner was one of such courses and hence, he was eligible to get admission under the reserved category for courses. According to the petitioner, there were total 275 seats. Reserved category ratio was 15:1 i.e. 19 seats. Merit list was displayed by the respondent authorities and the petitioner was shown at serial No.13. In view of the fact that there were 19 seats reserved for certificate holders, he ought to have been admitted. To the utter shock and surprise, however, the petitioner was not granted admission. On inquiry, he came to know that the seat was given to a female candidate and, hence, the petitioner was denied admission. The petitioner challenged the said action in the above petition.

The learned Single Judge dismissed the petition inter alia observing that the petitioner belonged to general category and no student lower in merit rank than the petitioner was admitted in Diploma course. Though six seats were reserved for female students, four could not be filled in due to non-availability of female students for reserved category and hence, one seat reserved for

female student of reserved category at Gandhinagar was converted into open category and was filled in only by female student of general category. The petitioner could not have any grievance against such action and hence, he had no case. Accordingly, the petition was dismissed. The present appeal is filed against that order.

We have heard at great length, Mr. Brahmbhatt for the appellant and Mr. Joshi, learned AGP for the respondents.

The contention of Mr. Brahmbhatt was that the respondent authorities issued information booklet (MAHITI PUSTIKA) in vernacular language for admission to the course in Diploma in Electronics and Communication Engineer for the academic year 1998-99. Clause 7.6 provided for reservation of certain seats for certificate holders. It specifically stated that there will be reservation of seats for students having certificate in the courses mentioned thereunder. One of such courses was Electronics Fabrication and Assembly Mechanic which is possessed by the petitioner. The appellant was, therefore, eligible to get admission on the basis of certificate in that course. It was to be given to the students for the academic year 1998-99. Hence, he was eligible and qualified and, therefore, entitled to get admission on the basis of such reservation. The stand taken by the respondent authorities that certain seats were reserved for female candidates of reserved categories and in view of the fact that sufficient number of female candidates were not available at Gandhinagar, the seats were converted into general category and admission was given to female student from open category, was illegal, arbitrary and unlawful. It was submitted that it is not even the case of the respondents that reservation for special courses was not earmarked. Moreover, Gandhinagar is not exclusively a female college but there was co-education. Finally, it was submitted that even at present, there are number of seats at several institutes, where the appellant can be admitted. By not doing so, an illegality has been committed by the authorities which requires to be interfered with. It was urged that the learned Single Judge did not consider the contentions raised by the appellant in their proper perspective and dismissed the petition which requires to be corrected by the Division Bench.

Mr. Joshi, learned AGP, on the other hand, submitted that by dismissing the petition, no error of law has been committed by the learned Single Judge. In para 4.4 of the affidavit in reply, it was admitted by the deponent

Joint Director of Technical Education- that 20 seats were earmarked for students who were certificate holders. But it was stated that out of 20 seats, fourteen were common seats and six seats were exclusively reserved for girls at Girls Polytechnic and were to be distributed amongst SC/ ST SEBC and general category students. It was further stated that from those seats, only two SEBC, one SC and one ST seats were filled in and hence, two seats reserved for SEBC and one seat reserved for ST candidates were converted into general category seats and candidates from general category were admitted. Accordingly, the petitioner could not be admitted.

Further affidavits and counter affidavits were also filed in the LPA, and Government Resolution dated May 5, 1999 issued by the Education Department was also annexed to the affidavit in reply. At the time of hearing of LPA, however, it was admitted by the learned AGP that the said Resolution of May 5, 1999 would not apply to the Academic Year in question which was 1998-99. In fact,, the circular dated June 2, 1998 which was relevant was also produced on record.

A short question for our consideration, therefore, is whether the action of the State Government was legal and valid in refusing admission to the appellant. Now, so far as Annexure 'C' (Information Booklet) is concerned, it was specifically provided as to how admissions were to be given to certificate holders. Clause 7.6 provides for such reservation for certificate holders. It was also provided that such reservation would be 15:1. Item 4 deals with the course cleared by the appellant. In paras 5 and 6 of the petition, it was stated by the appellant that he had completed certificate course in Electronic Fabrication and Assembly Mechanic and hence, he was eligible to be admitted on the reserved seat earmarked for certificate holders on the basis of merit list of certificate holders. The said fact is not only not controverted by the respondents but it was admitted that there was such reservation. In fact, in para 4.4 of the affidavit in reply, it was stated as under :

"4.4 With referencfe to para 6 of the petition, it is submitted that as per the provision of reservation of seats for certificate holders, 20 seats are reserved as there are total 305 seats in the course of Diploma in Electronics and Communication Engineering. The break up of the aforesaid 305 seats is as follows:

1. A.V.Parekh Technical Institute, Rajkot 80
2. Government Polytechnic, Ahmedabad 30
3. Government girls Polytechnic 45
4. Government Girls Polytechnic, Surat 30
5. Government Polytechnic, Gandhinagar 60
6. B & B Polytechnic, V.V.Nagar 60

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It is submitted that 20 seats are earmarked for candidates who are certificate holders. It is submitted that seats are allocated for various categories as per the current policy of reservation of the State (i.e. 7% SC, 14% ST and 27% for SEBC). A copy of the table showing reservation for the various categories is annexed herewith and marked as Annexure I to this affidavit in reply. It is further submitted that out of the aforesaid 20 seats, there are 14 common seats and 6 seats are exclusively for girls being at the Girls' Polytechnic and are distributed among SC, ST, SEBC and General category candidates to whom admission is granted as per their respective merit orders. A bare perusal of the table Annexure I will show that 7 seats out of the 14 common seats are reserved as follows :one seat for SC, 2 seats for ST, and 4 seats for SEBC candidates. Hence, only seven seats are available for the general category. It is further submitted that out of the seats reserved for the aforesaid categories only two SEBC, one SC and one ST seats were filled up. Hence, 2 seats reserved for SEBC and one seat reserved for ST candidates were converted into general category seats and candidates from the general category were admitted."

The question , therefore, is whether the respondent authorities were right in ignoring the claim of the appellant and by giving admission to a female student of general category who did not undergo the said course. In our considered opinion, it has not been done by the authorities.

As is clear, admissions were to be given on the basis of Circular dated June 2, 1998 and the declared policy which was reflected in clause 7.6. The said Circular specifically, clearly and unequivocally provided for reservation of certain seats for certain certificate

holders. Admittedly, the appellant had completed one of such certificate courses. His claim, therefore, could not have been ignored by the authorities. If, on the basis of marks obtained by him and merit list prepared for such certificate holders, he was not getting admission, he could not claim such admission, at the same time, however, when there is reservation of certain seats for certificate holders, such seat could have been allotted only to another certificate holder and not to any student who was not holding such certificate. The action of the respondent authorities in dereserving any seat taking out of such reservation quota which was earmarked for certificate holders and to give to some one else. It must, therefore, be held to be illegal and unlawful. The action, hence, deserves to be quashed and set aside.

Another contention of Mr. Brahmabhatt also appears to be well founded that there are certain institutes which are only for female students. In those institutes, obviously, male students cannot be admitted. But in the instant case, the institute is at Gandhinagar and there is co-education i.e. There are male students as well as female students. The assertion of the respondents that the petitioner could not have been admitted in view of the fact that certain female students were to be admitted is thus not well founded. Moreover, the reservation under the Circular, in our opinion, is not for girl students but for special courses. The grievance of the appellant is not for non-inclusion of his name for a seat earmarked for a girl student, but non-inclusion of his name in the reserved category earmarked for certificate holders. In our view, therefore, the contention of the petitioner is well founded that if he is reservation for certificate holders and the appellant is such certificate holder, he can claim inclusion of his name in that reserved quota. Rights of certificate holders on the basis of reserved quota for such certificate holders cannot be denied by the authorities. Such seats, in our judgment, can be allotted only to meritorious certificate holders and not to any one else, who is not a certificate holder.

For the foregoing reasons, in our opinion, LPA deserves to be allowed and is accordingly allowed. Action of the respondent authorities in not considering the case of the appellant-petitioner is illegal, unlawful and must be interfered with. Similarly, the order passed by the learned Single Judge also deserves to be quashed and set aside. LPA is, therefore, allowed by directing the respondent authorities to consider the case of the

appellant-petitioner on the basis of reservation for certificate holders and to take appropriate action in accordance with law. LPA is allowed to the aforesaid extent. No order as to costs. Since the question is of admission to technical course, authorities are directed to decide the question as expeditiously as possible preferably within two weeks from the receipt of writ.

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parekh